IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 550 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIGNESHBHAI DHIRUBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 550 of 2004

MR MP SHAH for Petitioner No. 1

MS. KRUTI M SHAH for Petitioner No. 1

MR HL JANI Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 06/10/2004

ORAL JUDGEMENT

1. This revision application is filed by the petitioner against an order passed by the ld. Judicial

Magistrate First Class, Bardoli, below an application filed by the present petitioner to have custody of muddamal Maruti Car bearing no. GJ-16-K-6635, which came to be seized by the police from accused Vikrambhai Dhirubhai Parmar, brother of present petitioner, because accused Vikrambhai was found in possession of the said car and was also found transporting illegal liquor through the said car of muddamal. First Information Report is lodged against the accused Vikrambhai on 5.11.2003, for the offences punishable under sec. 66(1)(B), 65(A)(E) and 116(2) of the Bombay Prohibition Act. It was also alleged that the said car was used by the accused through false number plate. The police also seized other muddamal of illegal liquor along with the said car.

2. The present petitioner filed an application before the ld. Judicial Magistrate First Class, Bardoli on 19.3.2004 to have the custody of the said car as per sec. 451 of Code of Criminal Procedure, during the pendency of trial because, according to the present petitioner, the said car was owned by him, its correct registration Number was GJ-16-K-6635 and was taken away without his knowledge by his driver by applying fictitious number plate and thus, the car came to be involved in the said crime.

3. On receiving the application, opinion of the Investigating Officer was called for by Ld. Magistrate and Investigating Officer objected to return of the car in the custody of petitioner and, ultimately, the ld. Judicial Magistrate First Class, Bardoli, came to the conclusion that since the car was transferred in the name of the petitioner only when the same was in police custody and as such having regard to the facts and circumstances, during trial, the custody of the car could not be handed over to the petitioner.

4. Being aggrieved, this revision application is filed by the petitioner. Ld. advocate Ms. Shah for the petitioner and ld. APP Mr. HL Jani were heard at length.

5. True, it is that, while the said car was in the custody of the police as muddamal in the said criminal offence, the car came to be transferred on 12.1.2004 in the name of present petitioner, though he applied for the custody of the car on 19.3.2004 in the trial court. At present, prima facie, it cannot also be denied that the said car was used in transporting illegal liquor, as

First Information Report has been filed against the accused Vikrambhai Dhirubhai and others. It is also disclosed by ld. APP that though the accused is released on bail, he is still to be arrested for some similar type of offences.

6. At this juncture, we are concerned with the provisions of sec. 451 of the Code of Criminal Procedure. The decision of the Supreme Court in the matter of Sunderbhai Ambalal Desai vs. State of Gujarat, as reported in 2003(1) GLH 307, is required to be taken into consideration for deciding this revision application, wherein the Supreme Court pleased to observe that during investigation, it was of no use to keep seized vehicles at the police station for long period. It was for the Magistrates to pass appropriate orders immediately by taking appropriate bonds and guarantee as well as security of return of said vehicle, if the same was required at any point of time. Undoubtedly, the vehicle in question is lying at police station since 5.11.2003. From registration book, it is clear that now as on today, vehicle stands in the name of the present petitioner though such transfer took place only after registration of offence against accused. Anxiety on the part of Investigating Agency as well as on the part of ld. Magistrate is in no manner misplaced, that having regard to the facts and circumstances disclosed by the First Information Report lodged against the accused, vehicle could be used again in similar type of crimes. It is felt that muddamal like vehicles may not be kept at the police station for long time so as to damage the muddamal itself only on account of its non-use. This situation can be taken care of by imposing some stringent condition to prevent further illegal use of the car in any crime. Therefore, as observed by the Supreme Court in the matter of Sunderbhai Ambalal Desai vs. State of Gujarat (supra), this revision application is required to be allowed by the following order.

7. In the result, this revision application is allowed. The order impugned in this revision application delivered by the ld. Judicial Magistrate First Class, Bardoli, below an application filed by the petitioner in Mahuva Prohibition CR No. III-191/2003, to get the custody of the muddamal vehicle, is set aside and it is directed that muddamal vehicle i.e. Maruti Car No. GJ-16-K-6635 seized in the said crime be handed over to the present petitioner on condition that he shall furnish personal bond of Rs. 2,00,000/- (Rupees Two Lacs only) with one surety of the like amount to the satisfaction of the trial court with a further condition that he shall

produce the said vehicle before the trial court whenever so directed, and that he shall not use the said car for any illegal purpose and, if so discovered, then the Investigating Agency will be at liberty to resume the custody of the said car and put the same in the custody of the trial court. Rule made absolute. DS permitted.

(J.R. VORA, J.)
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